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International Covenant on Civil and Political Rights

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Human Rights Committee

List of issues in the absence of the initial report of Swaziland*, **

Constitutional and legal framework within which the Covenant is implemented (art. 2)

1. What is the status of the Covenant under domestic law? Can provisions of the Covenant be directly invoked before domestic courts? If so, please provide detailed examples of cases in which that was done and with what results. Please provide information on efforts to harmonize common and customary laws with the Constitution and efforts to give effect to the provisions of the Covenant, including training of judges, prosecutors and lawyers regarding the rights protected under the Covenant. Please state if a law reform commission has been established to that end or if the Law Review Commission has been revived.

2. Please provide information on the availability of remedies for individuals claiming a violation of the rights contained in the Constitution and the Covenant. Please address the extent to which the Constitution is applicable and judicially enforceable with respect to, inter alia, the monarchy and chieftaincies, and give details of the remedies available in cases of eviction from land vested in trust for the Swazi nation by the *iNgwenyama* (the King) as provided for in sections 19 (2) (b) (i) and 211 of the Constitution. Please also give up-to-date information on the remedies provided to the victims following the decision in *Umbane Limited v. Sofi Dlamini and Three Others*. Please report on any plans to ratify the Optional Protocol to the Covenant.

3. Please provide information on any steps taken to adopt legislation that would enable the Commission on Human Rights and Public Administration to legally undertake activities as a national human rights institution in accordance with the principles relating to the status of national institutions for the promotion and protection of human rights (the Paris Principles). Please also provide information on the steps taken to establish a national mechanism for reporting and follow-up, as a standing government structure (ministerial, interministerial or institutionally separate) that is mandated to coordinate and prepare reports for submission to and engage with international and regional human rights mechanisms.

Public emergencies (art. 4)

4. Please state the grounds and procedures for which a state of emergency can be lawfully declared under domestic law, including article 36 of the Constitution, and the rights in the Constitution that are not derogable in times of public emergency, and explain how domestic law is in line with article 4 of the Covenant. Please provide information on

* Adopted by the Committee at its 119th session (6-29 March 2017).

** The initial report of Swaziland was due in 2005.

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the status and, if relevant, content of the 1973 State of Emergency decree. Is the decree still in force or has it been repealed? Have derogations from the Covenant been made and, if so, has the State party informed the Secretary-General thereof, as stipulated in article 4 (3) in the Covenant?

Non-discrimination and equality between men and women (arts. 2-3 and 25-26)

5. Please provide information on the measures taken in law and in practice to ensure protection from all forms of discrimination in the public and private sectors, including direct, indirect and multiple discrimination, and on all grounds protected by the Covenant, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth, disability, sexual orientation, gender identity, and to ensure the application of those measures in customary law. In particular, please provide information on whether sexual orientation, gender identity and marital status are included as prohibited grounds for discrimination under domestic legislation, including the Constitution.

6. Please provide information on measures taken in law and in practice to protect persons from discrimination and violence based on sexual orientation and gender identity, including in housing and employment, and to promote tolerance. Please provide information on complaints regarding violence against lesbian, gay, bisexual, transgender and intersex persons, and any investigations and prosecutions pursued, punishments imposed on offenders and reparations made to victims. Please address any plans to remove the common law criminalization of same-sex relations between men. Please provide disaggregated statistical data on the number of persons who have been infected with HIV and who have died from HIV- and AIDS-related illnesses. Please provide information on efforts to intensify education and awareness-raising among all parts of the population to combat societal stigma and discrimination against persons living with HIV/AIDS, including in employment. Please address specific measures to provide protection and support for women and girls and to end traditional practices that contribute to the spread of HIV, including the practice of wife inheritance, as well as efforts to develop prevention, testing and treatment programmes specifically targeting youth and the lesbian, gay, bisexual, transgender and intersex community.

7. Please provide information on the measures taken in the past three years to ensure the effective implementation of the National Gender Policy 2010. Please also provide information on: (a) women's status in the political, economic and social life of the State party; (b) the levels of employment among women and the proportion of women in decision-making positions in both the private and public sectors; (c) whether women and men receive equal pay for work of equal value; and (e) the literacy and school enrolment rates for women and girls as compared to those of men and boys. Please also specify what measures are in place to promote equal representation of women in decision-making positions, both in public affairs and the private sector, and the efforts made by the Government to fully implement section 86 of the Constitution, which sets a quota of 30 per cent for the representation of women in Parliament.

8. Please explain the compatibility of the restrictions in chapter 4 of the Constitution, which provide for different treatment between men and women regarding, inter alia, the acquisition and transfer of Swazi citizenship, with the Covenant. Please specify the measures taken to ensure that discrimination against women is prohibited under customary law both in law and in practice. Please also explain what measures have been taken to remedy women's limited access to land under the traditional land tenure system and what steps the State party has taken to amend section 16 (3) of the Deeds Registry Act (No. 37/1968), which was held to be unconstitutional by the Supreme Court. Please explain what concrete steps have been taken to ensure that women who are "married out of community of property" do not lose the right to administer their own or community property (marital power). Please explain what measures have been taken to address polygamy, discrimination against widows (such as restrictions on the ability to appear in public) and to raise public awareness to combat traditional practices and stereotypes regarding women, including in rural areas and with respect to traditional leaders.

Violence against women (arts. 3 and 6-7)

9. Please provide information on the legal provisions available to protect victims of gender-based violence, including the availability of temporary restraining orders, and on the status of the sexual offences and domestic violence bill. Please state how rape is defined in that bill and in the Girls' and Women's Protection Act (No. 39/1920), and whether the definition includes marital rape. Please give information on what measures the State party has taken to implement the national strategy and action plan to end violence 2013-2018 and the results of those efforts.

10. Please provide detailed information on the extent of the problem of violence against women in Swaziland, in particular domestic violence, on the number of one-stop centres and safe shelters outside the capital and on the resources allocated to assisting victims. Please provide information regarding the incidence of child and forced marriage (*kutekwa* and *kwendziswa*) and of abduction of women and girls, and on efforts to prevent and combat those phenomena in law and practice. Please also provide information on the steps taken to gather disaggregated statistical data on all forms of violence against women, and inform the Committee regarding the number of complaints received, of investigations and prosecutions carried out (including the number of convictions and acquittals), punishments imposed on offenders and reparations provided to victims during the past five years. Please specify what measures are being taken to ensure that such acts are effectively investigated and that perpetrators are prosecuted and sanctioned. Please also indicate whether other steps have been taken to combat violence against women, such as training of judges, prosecutors and police and health officers and awareness-raising campaigns for traditional authorities, the general public and women on their rights and available remedies.

Right to life, prohibition of torture and other cruel, inhuman or degrading treatment or punishment and treatment of persons deprived of their liberty (arts. 6-7 and 9-10)

11. Please provide data from the past five years on the rates of teenage pregnancy and maternal mortality, the latter disaggregated by cause of death, and information on measures taken to reduce both teenage pregnancy and maternal mortality in the State party. Please address how the restrictions on abortion set out in article 15 (5) of the Constitution have been implemented in law and in practice and provide information on any criminal enforcement measures, as well as on measures taken to ensure that restrictions on abortion do not prompt women to seek unsafe abortions that may put their lives and health at risk. Please report on awareness-raising efforts and steps taken to ensure that men, women and adolescents in all regions of the country have access to contraceptives and sexual and reproductive health education and services.

12. Please provide information regarding the legal standard applied in the State party for appropriate uses of force and firearms by law enforcement officials and the source of that standard in domestic law. Please explain what steps the State party has taken to ensure that such standards are respected by law enforcement and security personnel in practice. Please provide statistical data disaggregated by sex, age and ethnicity on reports of deaths from the use of force by police and security forces and the number of deaths in police custody during the reporting period, investigations conducted, prosecutions pursued, convictions secured, punishments imposed on offenders and reparations provided to victims. Please give information on the investigations and judicial proceedings into the deaths in police custody of Luciano Reginaldo Zavale and Sipho Jele. Please explain what measures the State party is taking to bring the Game Act (No. 51/1953), as amended in 1991, which gives conservation police personnel (game rangers) immunity from prosecution for killing any person suspected of having poached, in line with the Covenant, and to train game rangers in human rights. Please provide information regarding any plans to adopt the Second Optional Protocol, aiming at the abolition of the death penalty, and to abolish the death penalty.

13. Please provide information on permissible grounds for deprivation of liberty and state whether a redress mechanism to address instances of unlawful arrest or detention exists. Please also provide information on the rights of persons in police custody, including their right to have access to a lawyer, the stage at which a suspect is allowed access to a lawyer and the maximum period of detention before an individual is brought before a judge. Please state whether torture is specifically criminalized in the State party, with appropriate

penalties, and provide information on whether an independent body exists to investigate complaints and prevent abuse and ill-treatment by law enforcement officials. Please also provide data on the number of law enforcement officials that have been: (a) investigated; (b) prosecuted; (c) convicted or acquitted; and (d) punished, and the nature of the sanctions imposed.

14. Please respond to reports of inhumane prison conditions, including in terms of food shortages and inadequate sanitary conditions and medical care. Please also comment on the allegations that the president of the (outlawed) political party People's United Democratic Movement of Swaziland, Mario Masuku, was denied access to adequate and independent medical care for complications relating to diabetes throughout the 14 months he spent in pretrial detention at Zakhele Remand Centre and Matsapha Central Prison. Please provide detailed information on the number of existing prisons, prison capacity and the number of inmates, disaggregated by facility, and explain whether prisons include separate sections for minors and women. What measures have been taken, if any, to reduce overcrowding, including the use of alternative sentences, and to improve prison conditions? Please also provide information on the degree to which independent monitoring groups have access to prisons and detention centres, and on the State party's plans to ratify the Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.

Counter-terrorism (arts. 9, 14 and 19)

15. Regarding counter-terrorism laws, including the Sedition and Subversive Activities Act (No. 46/1938), the Public Order Act (No. 17/1963) and the Suppression of Terrorism Act (No. 5/2008), please state their compatibility with the Covenant, specifically its articles 9 and 19. Please report on the progress made to narrow the definition of terms such as "terrorist act" and to provide access to effective legal remedies and procedural safeguards, including under the proposed suppression of terrorism (amendment) bill, and on the status of the High Court's invalidation of portions of the Sedition and Subversive Activities Act and the Suppression of Terrorism Act. Please provide detailed information on the number of investigations, detentions, prosecutions, acquittals and convictions under each law in the past five years and the reasons therefore.

Right to a fair trial (art. 14)

16. Please comment on reports that Swaziland is experiencing a rule of law crisis, with high levels of corruption and political bias in the judiciary, leading, inter alia, to the impeachment of the Chief Justice and the arrest of the Minister of Justice, two High Court judges and a High Court registrar in 2015. Please provide information on specific measures taken to address that situation and to guarantee the independence and impartiality of the judiciary, including to ensure that rules relating to appointment and removal of judges are in line with the Basic Principles on the Independence of the Judiciary. According to section 157 (1) of the Constitution, foreigners shall not be appointed as judges in a higher court after seven years of the implementation of the Constitution, leading to a cut-off date of 27 July 2012. Please provide information on measures taken to implement that provision and to guarantee security of tenure and the transparency of the appointment process.

17. Please explain the procedure for granting free legal aid and provide details on the number and types of cases in which legal aid has been sought, granted and denied in recent years. Please provide information on the implementation of the Legal Aid Policy and the status of the draft legal aid bill. Please respond to reports of lengthy pretrial detention, particularly in politically sensitive cases, and that bail in such cases is set at high levels. Please explain how the traditional justice system is compatible with the fair trial provisions set out in the Covenant.

Elimination of slavery and servitude and trafficking in persons (art. 8)

18. Please comment on the information before the Committee that the State party is a country of origin, transit and destination for men, women and children trafficked for sex and forced labour, that forced and child labour are prevalent in the country and that orphans are particularly affected. Please provide statistical information from the past five years on

the prevalence of human trafficking and forced labour disaggregated by gender, age and country of origin of the victims; the number of complaints, investigations, prosecutions, convictions and punishments; and the number of victims who have received assistance in the form of reparation and rehabilitation. Please provide information on recent measures taken to combat and prevent those phenomena, including the implementation of the People Trafficking and People Smuggling (Prohibition) Act (No. 7/2009) and on the results achieved by the task force on prevention of trafficking. Please report on efforts to train law enforcement officials and social workers on identifying victims. to increase labour inspections, investigations and prosecutions and to protect and rehabilitate victims of trafficking and forced labour.

Freedom of movement (art. 12)

19. Please state how article 26 (6) of the Constitution, which provides for the deprivation of the right to freedom of movement when it is done under Swazi law and custom, is compatible with the article 12 (3) of the Covenant and report on the imposition of such restrictions in practice and the reasons for doing so. Please respond to reports that traditional leaders limit access to their territories in a manner that restricts the activities of civil society and political groups.

Freedom of expression, assembly and association (arts. 19 and 21-22)

20. Please comment on allegations that journalists, editors and human rights defenders are exposed to intimidation, attacks, arbitrary arrests and loss of life despite the constitutional provisions protecting the freedom of the press. Please provide detailed information on: (a) how freedom of opinion and expression is guaranteed in law and in practice, including with respect to circulating information in any form; (b) the existence of non-State controlled media; and (c) the legal regime that regulates the censorship of the media. Please provide information on the Proscribed Publications Act (No. 17/1968), the Public Order Act (No. 17/1963) and the proposed public order bill, their impact on the rights to freedom of expression and association and their compatibility with the Covenant. Please also give detailed information on the detention, proceedings, release and compensation (if any) awarded to human rights lawyer Thulani Rudolf Maseko and journalist Bheki Makhubu, and the status of their suit for wrongful arrest.

21. Please provide information on the regulations governing the operation of trade unions and on their application in practice. What is the status of the public services bill? What are the legislative restrictions on the right to form and join trade unions? Are certain categories of workers subject to particular restrictions? What percentage of the total work force belongs to a trade union? Please respond to allegations that trade union activities have been repressed and that arbitrary arrests and detentions, acts of intimidation and physical violence and warrantless searches have been carried out to silence activists in the State party.

Protection of minors (art. 24)

22. Please provide information on the implementation of the National Children's Policy (2009), on efforts to bring the Children Protection and Welfare Act (No. 6/2012) into conformity with international standards and on the work and mandate of the National Children's Coordination Unit. Please give current information on and the resources allocated for the implementation of the Free Primary Education Act (2010). Please provide information on the age for criminal responsibility and the potential maximum penalties imposed for crimes committed by minors. Please provide information on protections for children with disabilities and orphans, and on measures taken to address sexual and other forms of violence against children, including in rural areas.

23. According to information before the Committee, a substantial number of all births in Swaziland are not properly registered despite the fact that registration is the entry point for all public services, including access to free primary education and government grants. Please provide information on the measures taken to deal with that situation and provide up-to-date data on the rate of registration of newborn children. According to information before the Committee, corporal punishment is still lawful in the home, alternative care

settings, day care centres, schools and penal institutions. Please comment and provide information on the steps taken by the State party to prohibit corporal punishment by law and enforce the prohibition in all institutions, including detention centres, schools and homes.

Participation in public affairs, right to be elected (art. 25)

24. Please provide information on how the governmental structure of the State party is compatible with the right to participate in public affairs under article 25 of the Covenant, including information on the governmental positions that the King directly appoints at the national and local (*tinkhundla*) levels. Please comment on reports that the elections held in the State party in 2013 did not comply with international standards of free and fair elections, including the provisions of the Covenant. Please elaborate on the State party's electoral policies, including the work of the Election and Boundaries Commission. Please also detail the State party's policies regarding political parties and in particular the prohibition on political parties and how that is compatible with article 25 of the Covenant. What steps have been taken to ensure the right to participate in public and political life in Swaziland? In particular, have any measures been taken to address the fact that article 79 of the Constitution only allows individuals to participate in elections in their personal capacity? Please provide information on the implementation of the legal framework to combat corruption and on the Anti-Corruption Commission, including its independence, its recent investigations and activities, and the adequacy of its funding and resources. Please report on investigations carried out and on prosecutions, convictions and penalties imposed on government officials for acts of corruption.